

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: DIGITEK PRODUCTS	:	JUDGE JOSEPH R. GOODWIN
LIABILITY LITIGATION	:	
	:	MDL NO. 1968
	:	
THIS DOCUMENT APPLIES TO	:	
ALL CASES	:	

JOHN R. CLIMACO'S APPLICATION FOR PLAINTIFFS' STEERING COMMITTEE

I meet the main criteria for PSC membership based upon my willingness and availability to commit to this time-consuming project, my ability to work cooperatively with others, and my professional experience in this type of litigation. My law firm has the necessary staff and financial resources to make a substantial contribution as a member of the Digitek Litigation PSC. Associate Attorney Dawn Chmielewski has extensive knowledge of the Digitek issues. Attorney Chmielewski worked as both a cardiac nurse and an emergency department nurse for eight years at the Cleveland Clinic Foundation. She has treated individuals suffering from Digitalis toxicity.

I have been licensed to practice law in the State of Ohio for 41 years. I have an AV Martindale-Hubbell rating, and am listed in Ohio Super Lawyers. The National Law Journal named me one of the 100 most powerful lawyers in the United States.

I am admitted to practice in the United States District Court, Northern District and Southern District of Ohio; Southern District of California, Eastern District of New York; Eastern District of Michigan; Eastern District of Texas; U.S. Court of Appeals, Sixth Circuit Cincinnati; U.S. Court of Appeals, Second Circuit, New York; U.S. Court of Appeals, Seventh Circuit, Chicago; U.S. Tax Court; U.S. Supreme Court.

I have lectured on trial preparation and practice, RICO, ERISA, Mass Torts, Class Actions, MDL Proceedings, white collar criminal defense, labor and employment law throughout the country including the Stetson University College of Law's Annual Conference; the New York City Bar Association; the Aspen, Colorado Advanced Criminal Law Institute; the Case Western Reserve College of Law-CLE Program; the Health Care Section Conference of the Cleveland Bar Association; the Columbus Bar Association's Annual Litigation Institute; the Institute of Business Law of California State University, Los Angeles and the Ohio CLE Institute. In January and May 2001, I was a panel member in the Mealey's Baycol Seminar in San Diego, California. On October 24, 2003 I was a Keynote Speaker at the Fourth Annual Class Action/Mass Tort Symposium in New Orleans sponsored by the Louisiana State Bar

Association. On November 16, 2004, I was a panel member at the American Conference Institute's Welding Rod Litigation Conference in New Orleans.

I devote the majority of my time to General and Complex Litigation, including Mass Tort, Securities and ERISA litigation, Environmental, Toxic Tort, White Collar and Criminal RICO, and Public Law matters.

I have worked with Defense Counsel Richard Dean and Matthew Moriarty of Tucker Ellis & West LLP, located in Cleveland, Ohio. In addition, I continue to work with other Tucker Ellis & West LLP attorneys in other litigation, including Welding Fume cases.

Significant Reported Decisions, Jury Verdicts and Settlements

Herm, et al. v. Stafford, et al., 461 F. Supp. 515 (1978), 601 F.2d 588 (6th Cir. 1979) established two year statute of limitations in S.E.C. Rule 10b-5 security fraud litigation.

Inland Refuse Transfer Co., et al. v. Browning-Ferris Industries of Ohio, Inc., et al., 15 Ohio St.3d 321 (1984) parol evidence is admissible in a contract dispute where the contract is not clear and unambiguous.

William E. Brock, Secretary of Labor v. Loran W. Robbins, et al., 830 F.2d 640 (7th Cir. 1987)

Albrecht v. Treon, 118 Ohio St. 3d 348 (2008). Putative plaintiff and defendant class action suit against all county coroners and/or medical examiners in the state of Ohio who had removed, retained, and disposed of body parts without prior notice to the next of kin. Upon a certified question of state law, the Ohio Supreme Court found the next of kin of a decedent upon whom an autopsy has been performed do not have a protected right under Ohio law in the decedent's tissues, organs, blood, or other body parts that have been removed and retained by the coroner for forensic examination and testing.

On March 22, 1992, I was appointed by Thomas J. Lambros, former Chief Judge of the United States District Court, Northern District of Ohio as a member of the Plaintiffs' Steering Committee and Trial Counsel in a case against USAir arising out of the crash of Flight 405 at LaGuardia Airport in March, 1992, *In Re: Air Disaster at New York LaGuardia Airport on March 22, 1992*, MDL Docket No. 936 (Multi-Million Dollar Plaintiffs' verdicts).

From 1994 to 2004 I was a member of the Castano Plaintiff's Legal Committee ("PLC") serving as Acting Chairman of the PLC and Co-Chairman of various committees, including the Discovery, Trial and Fee Committees. In 2000, myself and the other 50 Castano law firms received the "Breath of Life Award" from the American Lung Association for our work in representing millions of claimants against the tobacco industry resulting in the historic \$196 Billion settlement with the tobacco industry. I was a member of the trial team in *Scott, et al. vs. The American Tobacco Company, Inc., et al.*, Class Action Claim No. 96-8461 in the Civil District Court of Louisiana, Parish of Orleans where a jury awarded all Louisiana smokers the right to participate in Smoking Cessation Programs and the Coordination Proceeding Special

Title (Rule 1550(b)) *In Re: Tobacco Cases II* in the Superior Court of the State of California for the County of San Diego, Case No. 711400.

In 1999 I served as Class Counsel in *Brack, et al. vs. General Motors Corporation*, Case No. CV 98 04046, Superior Court of New Mexico, County of Bernalillo (National Product Liability Settlement).

On February 1, 2001, I was appointed a member of the Plaintiffs' Steering Committee and Co-Chairman of the Discovery and Trial Committees In Re: Baycol Litigation Products, MDL 1431, U.S. District Court of Minnesota. (\$1.2 Billion in Settlements to date).

On July 6, 2001, Judge Kathleen O'Malley also appointed me as Co-Lead and Class Counsel in In Re: Inter-Op Hip Prosthesis Liability Litigation, MDL No. 1401, U.S. District Court, Northern District of Ohio, Eastern Division (\$3.2 Billion Settlement).

On July 25, 2002, the Honorable Kathleen M. O'Malley, United States District Court, Northern District of Ohio, Eastern Division appointed me a member of the Executive Committee in In Re: Scrap Metal Antitrust Litigation, Case No. 1:02CV0844.

On October 7, 2002, the Honorable Joseph R. Goodwin, United States District Court, Southern District of West Virginia, Charleston Division appointed me a member of the Executive Committee in In Re: Serzone Products Liability Litigation, MDL No. 1477.

On March 28, 2003, the Honorable Donald C. Nugent appointed me as Co-Lead Counsel *In re: OM Group Securities Litigation*, Case No. 02CV-2163, U.S. District Court, Northern District of Ohio, Eastern Division (\$92.4 Million Settlement - - - at the time of resolution, it was the 42nd largest security fraud settlement in history).

On September 16, 2003, the Honorable Kathleen M. O'Malley appointed me nationwide Liaison Counsel in In Re: Welding Rod Products Liability Litigation, MDL No. 1535, U.S. District Court, Northern District of Ohio, Eastern Division. I also serve on the Class Action, Discovery & Trial Committees.

Recently, I was Lead Trial Counsel in *Tamraz v. Lincoln Elec. Co.*, United States District Court, Northern District of Ohio, Eastern Division Case No. 1:04-CV-18948, *In re: Welding Fume Products Liability Litigation*, Case No. 1:03-CV-17000 (MDL Docket No. 1535). The jury returned a \$20.5 million dollar verdict. This is by far the largest of only three Welding Fume Plaintiff verdicts to date.

Judge John R. Adams appointed me as Liaison Counsel in *In Re: The Goodyear Tire & Rubber Company Securities Litigation*, Case No. 5:03CV2166, United States District Court, Northern District of Ohio, Eastern Division.

I am committed to assisting the Court in expeditiously completing the responsibilities set forth in the Manual on Complex Litigation and Pretrial Order No. 2.

/s/ John R. Climaco

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Certificate of Service

I hereby certify that on October 17, 2008 a true copy of the foregoing Notice of Suggestion of Death of Plaintiff was filed electronically. Notice of this filing was sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM / ECF system.

/s/ Dawn M. Chmielewski

Dawn M. Chmielewski, Esq.